Supreme Court, U.S.
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THE SUPREME COURT OF THE UNITED STATES

RICKARD HARLEY SCRUGGS,
Petitioner

v.

ALLEN LEE et all,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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Petition for Writ of Certiorari

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QUESTIONS FOR REVIEW

1. Does due process of law demand that a citizen arrested without a warrant have, if he demands one, a judicial determination of probable cause before being subjected to a booking process? Or can he be held indefinitely if he insists upon a judicial determination of probable cause prior to submitting to booking?

Is imprisonment without a judicial determination of probable cause (when demanded/not waived) unconstitutional

a. If an arrestee has a duty to submit to the booking process before there is a judicial determination of probable cause, from where does the duty arise? And what is the corresponding right?

b. Can an officer of the executive (in this case a sheriff) compel by force that a citizen participate in his (the sheriff's) "booking process" before there has been any determination that there was, or was not, probable cause for an arrest.. Put another way, "Does a citizen, if arrested, truly have a right to see a judge when demanded, or does he have only a privilege, granted after booking, by the executive officer who arrested him?"

c. Does due process only kick in after booking?

2. Is "booking" an essential prerequisite to a probable cause hearing?

a. And if so, when did 'administrative procedures' come to pre-empt due process of law?

b. If not, absent a waiver, why does 'booking' not follow completion of lawful requirements?

3. Does a sheriff, in Georgia, operate as an arm of the State in determining whether to produce a prisoner arrested without a warrant, before a magistrate?

4. Is the sheriff, in Georgia, in reality a separate office with some grant of authority, and some measure of control, from both the State and county, but independent of either.

5. Is the sheriff entitled to immunity under the 11th Amendment in the context of this case?

6. Does a law enforcement officer, in Georgia, have a ministerial duty do release one arrested without a warrant, when that arrestee has not been presented to a judge for a determination of probable cause within 48 hours of arrest?

7. Does a magistrate, in Georgia, have a ministerial duty to insist on the release one arrested without a warrant, when that arrestee has not been presented to a judge for a determination of probable cause within 48 hours of arrest?

Scruggs v. Lee

PARTIES
in the court below

Deputy Ferrell Howell
Officer James Greene
Allen Lee (deceased)
Winston C. Peterson
Deputy Raymond Peterson
Linda Peterson (Linda Brown when suit filed))
Rickard Harley Scruggs

THERE ARE NO COPORATE PARTIES

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STATEMENT OF JURISDICTION

Judgment affirming summary judgment for defendants was entered June 15, 2007.

Petition For Hearing En Banc was timely filed.

Order denying Petition For Hearing En Banc was entered August 8, 2007.
The jurisdiction of the Court of Appeals was invoked pursuant to Title 28 U.S.C. 1291.

The jurisdiction of this court is invoked pursuant to Title 28 U.S.C. Section 1254 (1).

The United States Court of Appeals for the Eleventh Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, and/or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Constitutional provisions, statutes, and Attorney General's Opinion

Amendment IV

(a)nd no warrants shall issue but upon probable cause, supported by oath or affirmation ...

Amendment XIV, Section I

(n)or shall any State deprive any person of life, liberty, or property without due process of law

O.C.G.A. 17-4-62 (Official Code Of Georgia)

In every case of an arrest without a warrant, the person arresting shall, without delay, convey the offender before the most convenient judicial officer authorized to receive an affidavit and issue a warrant as provided for in Code Section 17-4-40. No such imprisonment shall be legal beyond a reasonable time allowed for this purpose; and any person who is not brought before such judicial officer within 48 hours of arrest shall be released.

Attorney General's Opinion

"From the preceding code section it is apparent that the laws of Georgia envision that a warrant be issued in all cases involving a violation of the penal laws of the State." Georgia Attorney General's Opinion 1960-61 p. 92 - ***Emphasis in original.***

STATEMENT OF THE CASE

SUMMARY OF THE ARGUMENT

Federal Question to be determined

Is imprisonment without a judicial determination of probable cause ***(when demanded/not waived)*** unconstitutional.

False Imprisonment

Defendants Winston Peterson and Ferrell Howell had a known legal duty to produce Mr. Scruggs before the most convenient judicial officer. The fact that appellant had not been booked is irrelevant. Mr. Scruggs had demanded a judicial determination of probable cause. Mr. Scruggs did not waive a hearing. Until there is a judicial determination of probable cause there can be no warrant issued. Without a warrant there is not a lawful arrest. If there is no lawful arrest, there is no basis upon which to subject Mr. Scruggs to forced booking procedures or to imprisonment.

O.C.G.A. 17-4-62 requires that:

> In every case of an arrest without a warrant, the person arresting shall, without delay, convey the offender before the most convenient judicial officer authorized to receive an affidavit and issue a warrant as provided for in Code Section 17-4-40. No such imprisonment shall be legal beyond a reasonable time allowed for this purpose; and any person who is not brought before such judicial officer within 48 hours of arrest shall be released.

There is no exception in the law for misdemeanors. The Attorney General of Georgia has twice issued opinions on this statute;

> "From the preceding code section it is apparent that the laws of Georgia envision that a warrant be issued in all cases involving a violation of the penal laws of the State." Georgia Attorney General's Opinion 1960-61 p. 92 - ***Emphasis in original.***

See also Attorney General's Opinion u88-14 (R1-44-exhibit 'B')

That portion of County of Riverside v. McLaughlin, 500 U.S, 44, Gerstein v. Pugh, 420 U.S. 103, 114 (1975) etc. which approves of booking procedures prior to a judicial determination of probable cause, must relate only to persons who do not demand their putative right to a judicial determination of probable cause.

> "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." M: anda v. Arizona 384, U.S. 436, 490-491,

Defendants knew, or should have known, that they had no discretion to refuse to produce Scruggs before a magistrate within 48 hours and in fact failed to perform duties required of them, therefore have no qualified immunity.

Eleventh Amendment

The State is not the real party in interest. The State has no liability, nor potential liability, for any judgment against Sheriff Peterson.

Sheriff Peterson has no claim of immunity under the 11th Amendment in this case.

Judicial Immunity

By the time she got to the jail on November 29, 2003, Linda Brown had no authority to hold a hearing for Scruggs. There was no judicial act to perform. Had she had the power to order the release of Mr. Scruggs, it would have been a ministerial act. As soon as she was aware that Scruggs had been in jail for some 75 hours (long past the (48 hours statutorily allowed for a hearing) Linda Brown had an affirmative duty to insist that Scruggs be released until such time that a warrant was issued. Linda Brown stated in her deposition that a citation and a warrant, "(s)erves the same purpose". (R1-49-18, 19)

She states in her Response to Request for Admissions at No. 1 that she did not go to the jail to provide a probable cause hearing. (R2-57-1, R2-58-1) See also Deposition of Linda Brown (R1-49-6,8,9)

Linda Brown attempted to coerce Scruggs sign a false statement. (R1-27-1-p 9, R1-44-exhibit 'F'.

Defendant Brown is entitled to no immunity in the context of this case.

Facts material to questions presented

1. Mr. Scruggs was arrested without a warrant, October 26, 2003.
2. Mr. Scruggs gave his name and birth date, and surrendered his driver's license before being transported to jail.
3. This information was verified by the Georgia Bureau of investigation the following morning.
4. Mr. Scruggs declined to participate in booking procedures until there was a judicial determination of probable cause.
5. For his position, Mr. Scruggs was denied access to a judge and held incommunicado for more than three days

6. The afternoon of the third day Linda Brown was brought to the jail not to determine probable cause, but to coerce Mr. Scruggs to submit to 'booking'.
7. There has never been a judicial determination of probable cause to arrest, nor has there been a warrant issued in this case.

Basis of jurisdiction in district court

Plaintiff (Scruggs) originally invoked the jurisdiction of the United States District Court for the Southern District of Georgia, Waycross Division, pursuant to Title 28 U.S.C. Section 1331 and Section 1332 (a) (3) and (4). Jurisdiction was proper in that court pursuant to Local Rule 2.1(b).

ARGUMENT

The panel decision conflicts with decisions of the United States Supreme Court and Amendment XIV, Section I, and Amendment IV. No published opinions address this specific issue.

The decision is also apparently in conflict with this Court's decisions, taken together, in Gerstein v. Pugh, 420 U.S. 103, 114 (1975), and Miranda v. Arizona, 384 U.S. 436, 490, 491 (1966)..

Fourth Amendment

Judicial determination of probable cause is a right

> "(a)nd no warrant shall issue , but upon probable cause, supported by oath or affirmation, ..."Amendment IV

The Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest.

> When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty. Accordingly, *we hold that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest.* Gerstein v. Pugh, 420 U.S. 103, 114 (1975)

The right to judicial determination of probable cause can be waived. Scruggs did not waive the right to a judicial determination of probable cause.

If there is no probable cause there is no basis for booking.

Fourteenth Amendment Due Process of Law

> "(n)or shall any State deprive any person of life, liberty, or property, without due process of law; " Amendment XIV, Section I.

If due process of law involves the determination of probable cause by a judge, and if that probable cause determination can be denied in order to accommodate administrative functions, then the panel has decided that Mr. Scruggs had no right to due process of law. He may, or may not, have been granted the privilege to see a judge. If the decision of whether one can see a judge to determine probable cause rests with the arresting officer, it can hardly be considered a right.

> Judicial solutions to problems of constitutional dimension have evolved decade by decade. As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. That was our responsibility when Escobedo was before us and it is our responsibility today. ***Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.*** Miranda v. Arizona, 384 U.S. 436, 490, 491 (1966) emphasis supplied.

In this case there is no Constitutional provision, no statute, and no rule nor regulation, to require providing personal information, fingerprints, pictures, blood, urine, or handwriting samples.

Duty to Submit to Booking

Perhaps Mr. Scruggs did have a duty to submit to booking.

However, if this is the case, nowhere is there any indication that Mr. Scruggs had notice of a duty to submit to booking procedures. Not in State law, and not in any written policy of Sheriff Peterson, and certainly not in the Constitution of the United States nor the Constitution Of The State Of Georgia.

If Mr. Scruggs did have a duty from where does that duty arise. And, what is the corresponding right?

"Right and obligation are considered by all ethical writers as correlative terms" Ogden v. Saunders, 25 U.S. 213, 281 (1827)

If Mr. Scruggs did not have a duty - he was then denied due process of law.

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